

E. D. VONGEHR

IBLA 84-269

Decided August 6, 1984

Appeal from decision of the California State Office, Bureau of Land Management, declaring two mining claims null and void ab initio. CAMC 91795 and CAMC 96254.

Affirmed.

1. Mining Claims: Lands Subject to -- Recreation and Public Purposes Act

The Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 through 869-4 (1982), makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations, land classified for disposition and under lease pursuant to the Recreation and Public Purposes Act is not open to location under the mining laws.

APPEARANCES: E. D. Vongehr, Hornbrook, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

E. D. Vongehr has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 13, 1984, declaring the Model T Ford Placer and Model T Ford Lode mining claims null and void ab initio. BLM stated that according to its official records the lands on which the claims were located (the N 1/2 SE 1/4 NE 1/4 of sec. 29, T. 47 N., R. 6 W., Mount Diablo meridian) were classified on May 11, 1962, for disposal under the Recreation and Public Purposes Act (R&PP Act), as amended, 43 U.S.C. §§ 869 through 869-4 (1982). BLM found that at the time the claims were located, July 2 and September 10, 1981, respectively, the lands were not open to mineral location.

On appeal appellant claims that he was informed by BLM employees that the land in question was open to location; that the claims had been properly filed under section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714 (1982); and that he could proceed with his mining operations identified in a notice of intent to conduct mining operations. Appellant asserts that in these respects he was misled to his detriment by BLM.

Appellant also submits a copy of page 1 of a Recreation and Public Purposes Lease, dated May 22, 1962, between the United States and the county of Siskiyou allowing use of the subject lands for a trash disposal site. A copy of the serial register page for the land in question shows the following entry "2/14/83 20 yr renewal lse issued eff 5/22/1982." ^{1/} The land remains open to mining location, appellant contends, because the lease provides that minerals are reserved to the United States with the right to mine and remove them under applicable regulations to be prescribed by the Secretary of the Interior.

In conclusion appellant asserts that fairness should be exercised to guarantee him immediate rights to his claims or, at a minimum, as soon as the county vacates.

[1] The R&PP Act provides that: "Each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the land conveyed or leased and of the right to mine and remove the same under applicable laws and regulations to be established by the Secretary." 43 U.S.C. § 869-1 (1982) (emphasis added). This section of the R&PP Act is the genesis for the lease language cited by appellant. However, no such regulations have been promulgated. Thus, the Secretary has, in effect, prescribed that there is no right to mine and remove minerals from the lands in question. Until regulations are promulgated permitting the prospecting for, mining and removal of such reserved deposits, the lands in which such deposits may be found are not open to location under the mining laws. George Schultz, 81 IBLA 29, 37 (1984); Cruz G. Velasquez, 78 IBLA 355, 356 (1984). Likewise, although the county may be seeking other land for a trash disposal site and, in fact, may vacate the land in question, such land would not be open to mineral location because it would still be subject to the R&PP Act classification. Mere classification of land for disposition under the R&PP Act segregates that land from mineral location. Delmer McLean, 40 IBLA 34 (1979).

We turn now to appellant's assertions that he was misled by BLM employees into believing the land was open to location. Assuming, without deciding, that such allegations are true, appellant can gain no rights to the land. The regulations provide at 43 CFR 1810.3(a) that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. Moreover, 43 CFR 1810.3(c) states that reliance upon information or opinion of any officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

By law the lands in question are not open to mineral entry. Investigation of the official BLM records and relevant law would have revealed that fact to appellant. Thus, appellant could not claim ignorance of the facts, an essential element in proof of a claim of estoppel against the Government.

^{1/} Appellant asserts that the renewal lease is a year-to-year extension which has been granted while the county seeks a new disposal site. Appellant also states that he understands the county will soon have other property and will vacate this land.

See Harriet C. Shaftel, 79 IBLA 228, 232 (1984). In the absence of a showing of affirmative misconduct by a responsible Federal employee, estoppel will not lie against the Government because of reliance on erroneous information. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge.

